

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6650 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 - No

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DINESH S JANI

Versus

STATE OF GUJARAT

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Appearance:

MR MANOJ POPAT for Petitioner

MR VM PANCHOLI, AGP for Respondent No. 1, 2

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CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 08/07/1999

ORAL JUDGEMENT

In this petition purporting to be a petition under Article 226 of the Constitution, the petitioner who was then working as a Clerk in the office of the Collector, Baroda has challenged his supersession in the matter of promotion to the post of Deputy Mamlatdar and has prayed for a mandamus to direct the respondents to promote the petitioner to the post of Deputy Mamlatdar

with effect from 1.8.1975 with all consequential benefits.

2. According to the petitioner, in the seniority list of Clerks his name was placed at Sr.No. 93 and Mr HR Shah was placed at Sr.No. 94. Said Mr HR Shah came to be promoted as Deputy Mamlatdar on 1.8.1975. Therefore, the petitioner has prayed for a direction to the respondents to promote the petitioner to the post of Deputy Mamlatdar with effect from 1.8.1975.

3. Apart from the fact that this Court would not give any such direction to the authority to promote a particular employee to the higher post since it is for the authorities concerned to decide whether a person is fit or unfit for promotion - apart from that impediment-the challenge contained in the petition to the petitioner's supersession way back in 1975 is barred by gross delay, laches and acquiescence. Therefore, the challenge cannot be entertained. Even at the hearing of his appeal before the Gujarat State Civil Services Tribunal, which appeal was filed in the year 1983, the Tribunal had put a quarry to the petitioner as to which order the petitioner was challenging and the petitioner had stated that he was challenging the order dated 24.8.1983 of the Collector Baroda promoting the petitioner's junior. It was on that basis that the Tribunal had considered the petitioner's appeal within time and in this view of the matter, in this petition this Court would not permit the petitioner to challenge his supersession which was made in the year 1975. The petitioner's grievance is, therefore, being examined only in so far as the petitioner's supersession in 1983 is concerned.

4. Mr Manoj Papat, learned counsel for the petitioner has vehemently submitted that the criteria for promotion from the post of Clerk to the higher post of Deputy Mamlatdar was seniority-cum-fitness as held by this Court in Special Civil Application No. 512 of 1983 (1983 GLH 732) and other decisions referred to in paragraph 3 of the Tribunal's judgment. The learned counsel, therefore, submitted that the Collector was required to apply the aforesaid test i.e. the negative test whether the senior like the petitioner was unfit for promotion to the higher post while the juniors were being promoted. The learned counsel submitted that looking to the adverse remarks against the petitioner, it appears that the Collector applied a wrong test of fitness and did not apply a negative test of the unfitness.

Lastly, the learned counsel submitted that the adverse remarks were not written from year to year but were written for a part of the year and therefore, there was breach of Government instructions.

5. On the other hand, Mr Pancholi, learned AGP submitted that the selection committee had properly considered the material on record and in view of the confidential reports of the petitioner, had come to the conclusion that the petitioner was unfit for promotion and his juniors were found fit for promotion. Mr Pancholi further submitted that this Court would not sit in appeal over the decision of the authority in such matters. Further reliance is placed on the Government Resolution dated 8.3.1969 to point out that the confidential reports are required to be written as many times as the employee has worked under different reporting officers provided such period is not less than three months.

6. Having heard the learned counsel for the parties, it appears to the Court that the decision taken by the departmental selection committee at its meeting held on 10.5.1983 in view of the entries in the petitioner's confidential reports as per which the petitioner's name could not be recommended for promotion to the higher post of Deputy Mamlatdar cannot be to arbitrary and perverse so as to call for interference of this Court under Article 226 of the Constitution. While the adverse remarks for the period between 1.4.1978 to 12.12.1978 and 13.3.1979 to 31.3.1979 cannot be said to be very serious, the adverse remarks for the period between 6.11.1979 to 20.2.1980 are such that the authorities were justified in not promoting the petitioner to the higher post. Regarding his intelligence and sincerity and capacity for hard work, it was reported "weak". Regarding discipline, it was observed that the petitioner was required to be instructed. Regarding his relations with colleagues, it was mentioned that the petitioner was unable to maintain cordial relations. Regarding his conduct and work also, the petitioner was required to to given instructions time and again. The post of Deputy Mamlatdar is a responsible post where the employee is required to deal with a large number of people who come to the Government offices for their work. Even in the report for the period between 26.6.1979 to 4.11.1979, it was mentioned that the petitioner's capacity for work was less. In this view of the matter, no fault can be found with the decision of the Tribunal.

7. In view of the material on record, it cannot be

said that the authorities had applied a wrong test. Even by applying the test of unfitness, i.e. a negative test, it will have to be held that the authorities were justified in not promoting the petitioner when his juniors were promoted in 1983. As regards the contention that the confidential reports were not written from year to year, the Tribunal had rightly observed that in view of the Government Resolution dated 8.3.1969, different reports for various parts of the periods were permissible and that in the instant case separate confidential reports for the periods from 26.6.1979 to 4.11.1979 and 6.11.1979 to 20.2.1980 were written since the petitioner had worked in different offices during those periods and he was working under different reporting/reviewing officers and that those periods were undoubtedly for the length of more than three months.

8. In view of the above discussion, there is no merit in any of the contentions raised on behalf of the petitioner.

9. The petition is, therefore, dismissed. However, there shall be no order as to costs.

Sd/-

July 8, 1999 (M.S. Shah, J.)

sundar/-